IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

STATE OF TENNESSEE, ET AL.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Civil Action No. 1:24-cv-161-LG-BWR
	)	
XAVIER BECERRA, ET AL.,	)	
	)	
Defendants.	)	

PLAINTIFFS' MOTION FOR ENTRY OF BRIEFING SCHEDULE FOR DISPOSITIVE MOTIONS

The Plaintiff States respectfully move for entry of a case management schedule designed to advance this matter to final judgment and provide certainty to the States, their healthcare providers, and their citizens regarding the lawful scope of Section 1557 of the Affordable Care Act and Defendants' enforcement powers moving forward.

The parties have conferred but have been unable to reach agreement regarding a case management schedule. Plaintiff States provided Defendants' counsel with a proposed schedule for the filing of the administrative record and the briefing of dispositive motions. As part of that proposal, counsel for Plaintiff States advised Defendants' counsel that Plaintiff States would consent to Defendants' delaying any response to the Complaint and incorporating any such response into their briefing on dispositive motions. Counsel for Defendants opposed any discussion of a briefing schedule as premature and instead sought Plaintiff States' consent for an extension of their deadline to respond to the Complaint until September 30—some four months after Defendants were served with process and nearly three months after this Court issued its preliminary injunction order.

For the below reasons, the Plaintiff States oppose Defendants' extension request and instead

seek entry of the below briefing schedule so that this case may proceed to final judgment.

First, this case is well positioned to move expeditiously toward final judgment. No discovery is necessary to resolve this matter on the merits—a step that proceeds via summary-judgment motions based exclusively on the administrative record in nearly all cases brought under the Administrative Procedure Act. The legality of the 2024 Rule turns on issues of law that this Court has already thoroughly considered and addressed at length. This Court's injunction ruling was preliminary in posture but clear in its conclusion: "HHS acted unreasonably when it relied on *Bostock*'s analysis in order to conflate the phrase 'on the basis of sex' with the phrase 'on the basis of gender identity.'" Mem. Op. and Order [29] at 22 (finding that HHS had likely exceeded its statutory authority "by applying the *Bostock* holding to Section 1557's incorporation of Title IX in its May 2024 Rule"). Two other district courts reached the same conclusion on the merits. *Texas v. Becerra*, 2024 WL 3297147, at *1 (E.D. Tex. July 3, 2024) (finding that "federal agencies are attempting to impose a sweeping new social policy by manipulating and perverting the statutory text that constrains them"); *Florida v. U.S. Dep't of Health and Human Servs.*, 8:24-cv-1080-WFJ-TGW, Doc. 41 (M.D. Fla. July 3, 2024). No amount of further briefing can rehabilitate Defendants' radical rewrite of Section 1557 and Title IX.

Second, expeditious resolution of this case would promote much-needed clarity and is necessary to provide the States with full relief from the 2024 Rule. The injunction's preliminary nature necessarily means there is still substantial uncertainty regarding the 2024 Rule. And even if Defendants choose to appeal this Court's preliminary injunction ruling by their September 3 deadline for doing so, any such appeal would not "inherently divest the district court of jurisdiction or otherwise restrain it from taking other steps in the litigation," including a final ruling on the merits. *Satanic Temple, Inc. v. Tex. Health and Human Servs. Comm'n*, 79 F.4th 512, 514 (5th Cir. 2023). A prompt decision on the merits would also allow the Fifth Circuit to consider any appeal of this Court's merits decision in conjunction with any appeal of the July 3 preliminary-injunction order. The alternative would be

potentially years of appellate proceedings while the case remains pending before this Court and while the 2024 Rule hangs over the heads of affected medical providers and insurance carriers.

Accordingly, Plaintiff States propose the following case management schedule for the orderly progression of this case to final resolution:

August 15, 2024:	Defendants to file the administrative record
August 29, 2024:	Plaintiffs to file their motion for summary judgment
September 13, 2024:	Defendants to file their response to Plaintiffs' motion for summary judgment; any incorporated cross-motions; and response to complaint
September 27, 2024:	Plaintiffs to file their reply in support of their motion for summary judgment and incorporated response to any cross-motions filed by Defendants
October 4, 2024:	Defendants to file their reply in support of any cross-motions

This proposed schedule grants the parties the default briefing response timeline for each filing, and it permits Defendants more time to file the administrative record than is the default in other cases. *See, e.g.,* Fed. R. App. P. 17(a) (40 days from date of service). Alternatively, Defendants could stipulate by August 15, 2024, that the administrative record is not needed to resolve their legal arguments, or that this case can proceed with only the filing of a certified list or relevant portions of record contents. *Cf.* U.S. District Court for District of Columbia Local Civ. R. 7(n)(1); *Tennessee v. Cardona*, No. 2:24-cv-72-DCR-CJS, Doc. 121 (E.D. Ky. July 16, 2024) (directing parties to file certain portions of administrative record).

Date: July 22, 2024.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 22, 2024, a true and correct copy of the foregoing document was filed using the Court's electronic court-filing system, which sent notice of filing to all counsel of record.

/s/ Steven J. Griffin
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